

Code 2 General permits and conditions

FDEP Does Not Meet All 404 Requirements for General Permits

Commenter (0386) notes that the state failed to incorporate the full set of requirements for issuance of a General Permit (GP). The commenter asserted that the state's program omits the requirement that GPs may only be issued if "[t]he activities in such category are similar in nature and similar in their impact upon water quality and in the aquatic environment" (referencing Fla. Admin. Code 62-331.200-01).

The commenter stressed that the state also failed to incorporate the requirements that FDEP must follow when issuing GPs. The commenter stated that the state has not adopted any procedures for it to follow when considering and issuing GPs, but rather, takes the position that the state must follow the requirements of 40 CFR 233 when creating a GP, "but this information is not presented in the rule" (referencing Assumption Application B, app. j-3, at 58.) The commenter remarked that it is unclear how the state could ensure compliance with the guidelines without incorporating them into the state's program. The commenter added that the state seeks to issue GPs with the program submitted, even though it has failed to take any of the required steps to do so lawfully.

The commenter remarked that FDEP's proposed program is also less restrictive than 40 CFR 233.21. The commenter stated that the state's regulation unreasonably restricts its ability to require notice of intent of coverage under a GP, omitting the federal language that the agency can require notice "as appropriate" (comparing Compare Fla. Admin. Code 62-331.200(3) with 40 CFR 233.21(d)). The commenter asserted that the state regulation restricts the notice requirement to specifically identified circumstances and therefore limits FDEP's authority to require notice whenever appropriate.

The commenter urged that the state has further limited its authority by only allowing FDEP to require an individual permit where "sufficient cause exists," which is then defined as a "likelihood that the project will cause more than minimal adverse environmental effects." The commenter pointed out that federal rules, by contrast, allow the Director to do so "based on concerns for the aquatic environment," including compliance with the requirement for GPs to have only minimal individual and cumulative adverse environmental effects. The commenter added that the state's rules omit the automatic revocation of GP coverage once the agency requires an individual permit (comparing Fla. Admin. Code 62-331.200(6) with 40 CFR 233.21(e)).